

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**
WILMINGTON, DELAWARE 19801

John K. Welch
Judge

June 9, 2011

Danielle Blount, Deputy Attorney General
c/o Attorney General's Office
Criminal Division
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Mr. David C. Mize
66 Danvers Circle
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Pro-Se Defendant

Re: *State of Delaware v. David C. Mize*
Case Nos.: 1005008221 and 1007011035

Date Submitted: May 25, 2011

Date Decided: June 9, 2011

LETTER OPINION

Dear Ms. Blount and Mr. Mize:

Trial in the above captioned matter took place on Wednesday, May 25, 2011 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of documentary evidence and sworn testimony the Court reserved decision. This is the Court's Final Decision and Order.

The Defendant was charged with One Count Harassment allegedly in violation of 11 *Del.C.* §1311(a)(1) and One Count Breach of Release, allegedly in violation of 11 *Del.C.* §2113(c)(2) in Case No.: 1007011035. The Charging documents allege the defendant on or about the 13th of July 2010 in the County of New Castle, State of Delaware, did with intent, harass, annoy or alarm Shereese Smith, did engage in any

course of alarming or distressing conduct under the terms of the statute. Count 2 alleged a Breach of Release and alleged the defendant “on or about the 13th of July, 2010 knowingly and unlawfully failed to comply with a Judges’ order to wit to have no contact with Eric Graham in violation of a no-contact order.” *Id.*

In case no.: 1005008221, defendant was Charged with Terroristic Threatening in violation of 11 *Del.C.* §621(a)(1) on May 11, 2010 in the County of New Castle, State of Delaware. According to the Charging documents, defendant allegedly “did threaten to commit a crime likely to result in death or serious injury to person or property, to wit: did threaten to harm Eric Graham.” *Id.*

Count 2 of Case no.: 1005008221 alleged a second Breach of Release in violation of 11 *Del.C.* §2113(c)(2) and alleged the defendant did “knowingly and unlawfully fail to comply with a Judges order to wit, did have contact with Eric Graham in violation of a no-contact order.” *Id.*

THE FACTS

The Court has a very limited trial record before it. The State has offered only the oral testimony of the alleged victim. No documentary evidence, sworn testimony of a law experienced officer or third-party independent fact witness for the State. Eric Graham (“Graham”) was sworn and testified as follows: In New Castle County, May 11, 2010 there was an incident with David C. Mize (“defendant”) who was identified in the Courtroom. Graham was a neighbor of the defendant. Defendant lived upstairs and allegedly his dog bit the defendant on May 9, 2010. Graham claimed it

didn't happen in that there was "just a scratch" on his son. He looked at the defendant's child and claims there was no bite. Graham spoke with the defendant and claims the defendant claims his son was okay and not harmed and observed that no skin was broken.

On May 11, 2010 Graham heard yelling and screaming and exited his house and asked defendant "What's going on?" An argument ensued and allegedly the defendant told Graham "I'll shoot you and your dog!" The defendant then allegedly got in his car and left. Approximately half an hour later the defendant allegedly knocked on his door. Graham went and called the police about the incident. Two days later, on May 11, 2010 another altercation occurred with the defendant who Graham said he would shoot his girlfriend, himself and his dog." Graham testified he was in fear of his safety because he believes the defendant drinks alcohol and was possibly under the influence.

On cross-examination Graham testified he lives at 2202 Waters Edge Drive, Newark, DE, but is not on the lease.

Shereese Smith ("Smith") was sworn and testified. Smith is the stepdaughter of Graham. On July 13, 2010 she was involved in an altercation with the defendant at 2202 Waters Edge Drive. Smith claimed the defendant, on July 13, 2010 knocked on her door and asked her "Is the man of the house here?" He asked her "Who the f*** are you?" According to Smith, defendant kept knocking on the door. Smith told him it was none of her business and he yelled out and called her profane names and told

her if she didn't open the door he would kick the door down. Smith called the police and subsequently filed a police report regarding the incident.

The defense presented its case-in-chief.

David C. Mize ("defendant" or "Mize") was sworn and testified. On May 9, 2010 he testified that there was an incident at 2206 Waters Edge Drive which is a rental unit. Defendant claims he heard his son screaming and ran down and observed Graham's dogs, two (20 pit bulls, and his son on the ground involved in a "malaise". The dogs had gotten on top of his son and he claims the dog bit his son. He introduced exhibits into evidence which were pictures of the dog bites and other documents filed with the Division of Natural Resources and Environmental Control ("DNREC") documenting the same. His wife subsequently called the police, who informed her to call animal control. Mize claims his wife is still upset about the incident and that Graham and his wife were not on the lease and eventually the dog was put down by the DNREC. He claims he and his wife are continually harassed by neighbors and the alleged victims of the incident. Mize claims that his son was actually bitten by the dog, which the pictures clearly depict. He denies all the allegations in the charging documents and claims the incident and charging document in this would never have been filed if it wasn't a dog bite case involving his son.

On cross-examination, Mize testified he was upset by the incident and believes Graham, as the owner, is responsible for his dog and is now satisfied that the dog was put down by DNREC.

Valerie Mize (“Mrs. Mize”) was sworn and testified. Mrs. Mize resides at 1408 Waters Edge Drive in Newark, Delaware. She is the defendant’s wife. She claims she is continually harassed because of this incident by the alleged victim. She called the police who told her to call Animal Control. Mrs. Mize claims her husband was not drunk or high at the time and the problems are solely attributed to the alleged victims and this incident of dog biting of her son. She claims because of this incident she is constantly harassed. She also believes the alleged victims were legally removed as tenants from the premises because they were not on the lease and were not signed tenants of the property.

THE LAW

The State has a burden of proving each and every element of these offenses beyond a reasonable doubt. 11 Del. C. § 301. *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965).

As established case law indicates, a reasonable doubt is not a vague, whimsical or merely possible doubt, “but such a doubt as intelligent, reasonable, and impartial men may honestly entertain after a conscious consideration of the case. *Matushefske*.

A reasonable doubt “means a substantial, well-founded doubt arising from a candid and impartial consideration of all the evidence or want of evidence.” *State v. Wright*, Del. Gen. Sess., 79 A.2d 399 (1911).

The State also has the burden of proof beyond a reasonable doubt that jurisdiction and venue has been proven as elements of the offense. 11 Del. C. § 232.

James v. State, Del. Supr., 377 A.2d 15 (1977). *Thornton v. State*, Del. Supr., 405 A.2d 126 (1979).

The Court as trier of fact is the sole judge of the credibility of each fact witness.

If the Court finds the evidence presented to be in conflict, it is the Court's duty to reconcile these conflicts, if reasonably possible, so as to make one harmonious story of it all.

If the Court cannot do this, the Court must give credit to that portion of the testimony which, in the Court's judgment, is most worthy of credit and disregard any portion of the testimony which in the Court's judgment is unworthy of credit.

In doing so, the Court takes into consideration the demeanor of the witness, their apparent fairness in giving their testimony, their opportunities in hearing and knowing the facts about which they testified, and any bias or interest that they may have concerning the nature of the case.

OPINION AND ORDER

The Court has reviewed and scrutinized this limited record carefully. No law enforcement witness or third-party witness other than the blood relatives of each respective parties testified in this criminal proceeding. The Court notes that a motive does exist in this record for the charges in that allegedly, the alleged victim's dog was put down and the alleged victims were forced to leave the leasehold premises because they were not on the leasehold interest as a result of defendant's complaints. In

addition, there is clear animosity between the parties which causes the Court to carefully scrutinize any bias or interest in the outcome of this case.

The Court actually heard two different versions of the incident. Defendant took the stand and claims none of the charging documents are true and that this was really just a “dog bite case”. The defendant claims that he is not guilty of these charges and they were not proven beyond a reasonable doubt. 11 *Del.C.* §301. The alleged victims and the victim’s stepdaughter took the stand and testified and claims the defendant harassed and committed terroristic threats against them after the dog bite incident which is set forth above in the summary of facts. All witnesses were blood relatives of the respective parties.

Credibility issues weigh on both the defendant’s case-in-chief and the state’s case-in-chief. Clearly there is an animus relationship between the parties which the Court notes in the trial record. If this were in fact a civil case which required proof by a preponderance of evidence, or “more likely than not”, the Court would probably adjudicate in favor of the State. Such, however is not the case or required burden of proof. *See* 11 *Del.C.* §301. However, carefully balancing the credibility issues and any bias or interest that exists in the trial record and the animosity between the parties, the Court believes there is reasonable doubt in the record that all these charges were proven beyond a reasonable doubt in the trial record. *See* 11 *Del.C.* §301.

Again, the Court notes it has a very limited record and no third party, independent fact witnesses or law enforcement witness testified as to the alleged

incidents. No documentary evidence was submitted by the State. At best, the evidence and credibility of the parties is equally balanced. Looking at the burden of proof beyond a reasonable doubt and the respective credibility issues on both sides, the Court thereby enters a finding of **Not Guilty**.

IT IS SO ORDERED this 9th day of June, 2011.

John K. Welch
Judge

/jb

cc: Ms. Wanda Dean, Case Processor
CCP, Criminal Division